

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re) Chapter 7
) Case No. 09 B 17582
Nachshon Draiman,) Honorable John H. Squires
)
Debtor.) Hearing Date: July 26, 2011
) Time: 9:30 a.m.

**COVER SHEET FOR APPLICATION FOR
PROFESSIONAL COMPENSATION**

Name of Applicant: Baldi Berg & Wallace, Ltd., Attorneys at Law

Authorized to Provide Professional Services to: Nachshon Draiman
Debtor and Debtor in Possession

Date of Order Authorizing Employment: November 24, 2009

Period for Which Compensation is sought: March 1, 2011 through May 13, 2011

Amount of Fees sought: \$48,767.50

Amount of Expense Reimbursement sought: \$827.48

This is an: Interim Application ☐ Final Application ☒

If this is not the first application filed herein by this professional, disclose as to all prior fee applications:

| <u>Date Filed</u> | <u>Period Covered</u> | <u>Total Requested (Fees & Expenses)</u> | <u>Total Allowed</u> |
|-------------------|------------------------------|--|---------------------------------------|
| 4/16/2010 | 11/17/2009 through 3/25/2010 | \$134,757.50 fees \$562.38 exp. | \$134,757.50 fees \$ 562.38 exp. |
| 8/10/2010 | 3/25/2010 through 7/30/2010 | \$111,751.00 fees \$1,845.76 exp. | \$111,751.00 fees \$ 1,845.76 exp. |
| 12/10/10 | 7/31/2010 through 11/15/2010 | \$ 65,274.50 fees \$ 2,497.46 exp. | \$ 64,462.00 fees \$ 2,497.46 exp. |
| 4/14/2011 | 11/16/2011 through 2/28/2011 | \$99,413.50 fees \$ 168.54 exp. | \$99,413.50 fees \$ 168.54 exp. |

The aggregate amount of fees and expenses paid to the Applicant to date for services rendered and expenses incurred herein is: \$ 415,458.14.

Dated: June 27, 2011

Baldi Berg & Wallace, Ltd

By: /s/ Donna B. Wallace
Partner

**UNITED STATES BANKRUPTCY COURT
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EASTERN DIVISION**

| | | |
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| In re |) | Chapter 7 |
| |) | Case No. 09 B 17582 |
| Nachshon Draiman, |) | Hon. John H. Squires |
| |) | Hearing Date: July 26, 2011 |
| Debtor. |) | Time: 9:30 a.m. |

Notice of Application

To: See Attached Service List

PLEASE TAKE NOTICE that on July 26, 2011, at the hour of 9:30 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable John H. Squires, United States Bankruptcy Judge, in Room 680 of the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, and shall then and there present the **Fifth and Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses of Baldi Berg & Wallace, Ltd., Attorneys for Debtor in Possession**, a copy of which is attached hereto and hereby served upon you.

Joseph A. Baldi
Attorney I.D. No. 00100145
Donna B. Wallace
Attorney I.D. No. 6200260
Baldi Berg & Wallace
Suite 1500
19 South LaSalle Street
Chicago, IL 60603

Certificate of Service

I, Donna B. Wallace, an attorney, hereby certify that I caused a true and correct copy of the foregoing Notice of Application and the document identified therein to be served on the persons on the attached service list at their respective addresses via electronic mail and/or first class mail delivery, as indicated on the attached service list, on July 5, 2011.

/s/ Donna B. Wallace

Service List
Nachshon Draiman
09-17582

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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|--------------------------|---|------------------------------------|
| In re |) | Chapter 7 |
| |) | Case No. 09 B 17582 |
| Nachshon Draiman, |) | Hon. John H. Squires |
| |) | Hearing Date: July 26, 2011 |
| Debtor. |) | Time: 9:30 a.m. |

**Fifth and Final Application for Allowance and Payment of
Compensation and Reimbursement of Expenses of
Baldi Berg & Wallace, Ltd., Attorneys for Debtor in Possession**

Baldi Berg & Wallace, Ltd.¹, ("BBW"), attorneys for Nachshon Draiman, Debtor in Possession ("Debtor"), pursuant to sections 330 and 331 of title 11, United States Code ("Code"), requests this Court to enter an order (a) allowing final compensation to BBW in the amount of \$48,767.50 for 135.7 hours of legal services rendered to the Debtor from March 1, 2011 through May 13, 2011; (b) allowing to BBW \$827.48 for reimbursement of its expenses incurred in connection with such services; and (c) authorizing and directing the Debtor to pay such allowances forthwith. In support thereof, BBW respectfully states as follows:

Introduction

1. Debtor commenced this bankruptcy case on May 14, 2009 by the filing of a voluntary petition for relief under chapter 11 of title 11, United States Code ("Code").
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

¹ In September 2010, Joseph A. Baldi & Associates, P.C. changed its name to Baldi Berg & Wallace, Ltd.

History of the Case

3. On April 19, 2011, the Bankruptcy Court entered an order denying confirmation of the Debtor's Fourth Amended Plan. On May 12, 2011, the court entered an order converting the case to a case under Chapter 7 of the Code effective May 13, 2011.

4. On May 13, 2011, Richard M. Fogel ("Trustee") was appointed as trustee for the chapter 7 estate.

Retention of BBW

5. On November 12, 2009, this Court entered an Order allowing Debtor's former counsel, Ralph, Schwab & Schiever, Chartered to withdraw as counsel in this case and granting Debtor until December 4, 2009 to retain substitute counsel. Thereafter, on November 24, 2009, this Court entered an order authorizing the Debtor to employ BBW as his attorneys in this case ("Retention Order"). A copy of the Retention Order is attached hereto as Exhibit A. BBW has served as counsel for the Debtor at all times since its retention by the Debtor.

6. The professional qualifications and experience of the BBW attorneys and paralegals that have performed substantial legal services for the Debtor during the period covered by this Application are set forth in Exhibit B. A listing of the attorneys, paralegals and clerks who were responsible for representing the Debtor during the period covered by this fee application, their position with the firm, hourly rate and the total hours expended by each professional is detailed below:

| <u>PROFESSIONAL</u> | <u>TITLE</u> | <u>RATE</u> | <u>HOURS</u> | <u>FEES</u> |
|----------------------------|---------------------|--------------------|---------------------|--------------------|
| Joseph A. Baldi | Principal | \$425.00 | 56.5 | \$23,162.50 |
| Donna B. Wallace | Principal | \$325.00 | 78.8 | \$24,635.00 |
| Elizabeth C. Berg | Principal | \$300.00 | .4 | \$120.00 |
| TOTALS | | | 135.7 | \$48,767.50 |

Prior Compensation

7. This is the Fifth application ("Application) for allowance and payment of compensation that BBW has filed in this case. BBW filed its first application ("First Application") for allowance and payment of compensation on April 16, 2010, its second application ("Second Application") for allowance and payment of compensation on August 10, 2010, its third application on December 10, 2010 and its fourth application on April 14, 2011. The period covered by the previous applications and the amounts awarded to BBW pursuant thereto are as follows:

| <u>Application</u> | <u>Date of Order</u> | <u>Amounts Requested</u> | <u>Amounts Allowed</u> |
|------------------------|----------------------|--------------------------|------------------------|
| First Application | 4/29/10 | \$ 134,757.50 fees | \$ 89,838.34 fees |
| | 7/12/10 | | \$ 44,919.17 fees |
| 11/17/09 – 3/25/10 | 4/29/10 | \$ 562.38 exp. | \$ 562.38 exp. |
| Second Application | 8/30/10 | \$ 111,751.00 fees | \$ 111,751.00 fees |
| 3/25/10 – 7/30/10 | 8/30/10 | \$ 1,845.76 exp. | \$ 1,845.76 exp. |
| Third Application | 12/20/10 | \$ 65,274.50 fees | \$ 64,462.00 fees |
| 7/31/10 – 11/15/10 | 12/20/10 | \$ 2,497.46 exp. | \$ 2,497.46 exp. |
| Fourth Application | 5/5/2011 | \$ 99,413.50 fees | \$ 99,413.50 fees |
| 11/16/2011 – 2/28/2011 | | \$ 168.54 exp. | \$ 168.54 exp. |

Copies of the April 29, 2010, July 12, 2010, August 30, 2010, December 20, 2010 and May 5, 2011 compensation orders are attached hereto as Exhibit E. A recapitulation, by category, of the amounts requested for compensation and expenses in the First, Second, Third and Fourth Applications is attached hereto as Exhibit H.

Services Rendered by BBW

8. Itemized and detailed descriptions of the specific services rendered by BBW to the Debtor for which compensation is sought in this Application are reflected on the billing statements attached hereto as Exhibit C. The billing statements set forth the name of each attorney or paralegal, the amount of time expended rendering each service, the date on which each service was rendered, a description of the service rendered and the total number of hours of services rendered by each attorney or paralegal in each category.

9. The services rendered by BBW during the time covered by this Application have been segregated into six (6) specific categories and an itemized summary list is set forth below:

| Category | Total Hours | Total Fees |
|------------------------|---------------|--------------------|
| General Administration | 10.9 | \$4,632.50 |
| Dynegy Adversary | 1.0 | \$425.00 |
| Fee Applications | 16.8 | \$5,730.00 |
| Motion to Convert | 2.5 | \$1,062.50 |
| Motions to Lift Stay | 34.7 | \$11,132.50 |
| Plan and Disclosure | 69.8 | \$24,935.00 |
| Totals | 135.70 | \$48,767.50 |

10. A description of the services rendered by BBW in each category during the period covered by this Application is as follows:

10.1 General Administration: During the period covered by this Application, BBW represented Debtor in connection with his chapter 11 case. BBW conferred with Debtor regarding matters related to Peterson Park, Embassy and Burnham Healthcare. BBW also conferred with Debtor regarding requests from Dynegy. BBW conferred with Debtor concerning

appeal of the order denying confirmation and completed research regarding same. BBW reviewed and filed operating reports.

In connection with the foregoing services, BBW spent 10.9 hours for which it requests allowance and payment of final compensation in the amount of \$4,632.50, as detailed below:

| Professional | Hours | Rate | <u>Fees</u> |
|---------------------|--------------|-------------|--------------------|
| Joseph A. Baldi | 10.9 | \$425.00 | \$4,632.50 |
| Totals | 10.9 | | \$4,632.50 |

10.2 Dynegy Adversary: During the period covered by this application, BBW conferred with Debtor and co-counsel regarding the adversary.

In connection with the foregoing services, BBW spent 1.0 hours for which it requests allowance and payment of final compensation in the amount of \$425.00, as detailed below:

| Professional | Hours | Rate | <u>Fees</u> |
|---------------------|--------------|-------------|--------------------|
| Joseph A. Baldi | 1.0 | \$425.00 | \$425.00 |
| Totals | 1.0 | | \$425.00 |

10.3 Fee Applications: BBW prepared and presented its Fourth Interim Fee Application and all exhibits required. BBW conferred with Debtor concerning the foregoing application and revised the application and exhibits in accordance with issues raised by Debtor.

In connection with the foregoing services, BBW spent 16.8 hours for which it requests allowance and payment of final compensation in the amount of \$5,730.00, as detailed below:

| Professional | Hours | Rate | <u>Fees</u> |
|---------------------|--------------|-------------|--------------------|
| Joseph A. Baldi | 2.8 | \$425.00 | \$1,190.00 |
| Donna B. Wallace | 13.6 | \$325.00 | \$4,420.00 |
| Elizabeth C. Berg | .4 | \$300.00 | \$120.00 |

| | | | |
|---------------|------|--|------------|
| Totals | 16.8 | | \$5,730.00 |
|---------------|------|--|------------|

10.4 Motion to Convert: Dynegy filed an emergency motion to convert Debtor's case to a case under chapter 7 of the Code. During the period covered by the Application, BBW appeared at the hearing on the motion to argue against the conversion of the case and conferred with the Debtor concerning the motion

In connection with the foregoing services, BBW spent 2.5 hours for which it requests allowance and payment of final compensation in the amount of \$1,062.50, as detailed below:

| Professional | Hours | Rate | <u>Fees</u> |
|---------------------|--------------|-------------|--------------------|
| Joseph A. Baldi | 2.5 | \$425.00 | \$1,062.50 |
| Totals | 2.5 | | \$1,062.50 |

10.5 Motions to Lift Stay: During the period covered by this Application, Morris Esformes, Debtor's partner in the Burnham Healthcare Entities, filed a Motion For Relief From Stay ("Motion") in order to foreclose Debtor's interest in Burnham. Debtor believed the Motion may have been made in bad faith because Esformes, who was managing Burnham and controlled its finances, stopped making distributions to Debtor shortly after Debtor filed his petition which caused Debtor to default on a loan secured by Debtor's interest in Burnham. Esformes subsequently purchased the Burnham note, but did not file any notice of the transfer of the claim with the Court. BBW researched cases relating to the defense of the Motion. In addition, BBW prepared subpoenas for documents to Esformes and Brickyard Bank. BBW prepared and presented a Motion to Extend Time to Respond to the Motion and a Motion to Compel Esformes to Produce Documents. BBW also prepared and filed a response to the Motion.

In connection with the foregoing, BBW spent 34.7 hours for which it requests allowance and payment of compensation in the amount \$11,132.50, as detailed below:

| Professional | Hours | Rate | <u>Fees</u> |
|---------------------|--------------|-------------|--------------------|
| Joseph A. Baldi | 1.8 | \$425.00 | \$382.50 |
| Donna B. Wallace | 32.9 | \$325.00 | \$10,367.50 |
| Totals | 34.7 | | \$11,132.50 |

10.6 Plan and Disclosure Statement: During the period covered by this Application, BBW completed Debtor's Reply Brief in Support of Confirmation. In connection with the Reply, BBW researched issues raised by Dynegy in its Response. BBW prepared and presented Debtor's Motion to Supplement the Record due to receipt of Debtor's tax refund. After the Court denied confirmation, BBW conferred with Debtor concerning possible legal responses to the denial of confirmation.

In connection with the foregoing, BBW spent 69.8 hours for which it requests allowance and payment of compensation in the amount \$25,785.00, as detailed below:

| Professional | Hours | Rate | <u>Fees</u> |
|---------------------|--------------|-------------|--------------------|
| Joseph A. Baldi | 37.5 | \$425.00 | \$15,937.50 |
| Donna B. Wallace | 32.3 | \$325.00 | \$9,847.50 |
| Totals | 69.8 | | \$25,785.00 |

Compensation Requested

11. BBW has spent a total of 135.7 hours for the services described in paragraph 10 above from March 1, 2011 to May 13, 2011. The total value of those services and the amount of compensation requested therefore is \$48,767.50. A summary of the hours spent and the dollar

value of the services rendered in each category is attached hereto as Exhibit D (and is listed on the table in paragraph 10 above).

12. All of the services performed by BBW were required for proper representation of the Debtor in this case, were authorized by this Court and were performed by BBW at the request and direction of the Debtor. Pursuant to sections 330 and 331 of the Code and the generally applicable criteria with respect to the nature, extent and value of the services performed, all of BBW's services are compensable and the compensation requested is fair and reasonable. There has been no duplication of services rendered to the Debtor by BBW for which compensation is requested.

13. The rates charged by the attorneys and paralegals of BBW in this Application were their usual and customary hourly rates charged during the period covered by this Application for work performed for other clients in both bankruptcy and non-bankruptcy matters. Each of the billing statements attached hereto as Exhibit C contains a comprehensive summary, by category of service, of each person who performed services for the Debtor, the number of hours they expended in each category and the compensation requested therefore.

14. This Application does not include any time or request for compensation for fees relative to the preparation of this Application. This Application represents the Fifth and Final application for compensation that BBW has filed in this case.

Expenses

15. BBW has incurred expenses in the amount of \$827.48 in connection with its representation of the Debtor during the period covered by this Application for which it now requests reimbursement. Expenses were incurred for copying and postage incurred for serving notices related to fee applications, overnight mail charges incurred in serving subpoenas in

connection with the Esformes motion for relief from stay, Lexis document retrieval service used to retrieve UCC filings from the Secretary of State in connection with the Esformes Motion and Court reporter fees for transcripts of the confirmation hearing.

16. The expenses incurred by BBW from March 1, 2011 through May 13, 2011 have been recorded and allocated to the specific categories outlined herein and are set forth in detail on the billing statements attached hereto in Exhibit C.

17. A summary, categorized by product type, of the actual expenses incurred by BBW is set forth below:

| Expense | Cost |
|-------------------------------|-----------------|
| UCC Search and documents | \$141.12 |
| Overnight Mail | \$95.12 |
| Court Reporter/Transcript Fee | \$531.30 |
| Copy Charges | \$11.10 |
| Postage | \$48.84 |
| Total | \$827.48 |

Payments Received

18. Prior to the entry of the order authorizing Debtor to retain BBW, BBW received an advance payment retainer in the amount of \$15,000.00 which was paid by Mark Hollander, a business associate of Debtor. This retainer was an advance payment retainer for future services and costs for BBW's representation of the Debtor in this case. In addition, on December 15, 2009 this Court entered an order authorizing Debtor to pay an additional retainer of \$35,000.00 to BBW. On April 29, 2010, this Court entered an order allowing final compensation in the amount of \$89,838.34 and allowed reimbursement of expenses in the amount of \$562.38. BBW

was authorized to apply the two retainers previously received. The matter was continued as to the remainder of the fees requested. On July 12, 2010, this Court entered an order allowing interim compensation to BBW in the amount of \$44,919.17 and authorized Debtor to pay that sum. On August 30, 2010, the Court authorized Debtor to pay BBW fees of \$111,751.00 and expenses of \$1,845.76. On December 20, 2010, the Court authorized Debtor to pay BBW fees of \$64,462.00 and expenses of \$2,497.46. On May 5, 2011, the Court authorized Debtor to pay BBW fees of \$99,413.50 and expenses of \$168.54. The orders dated April 29, 2010, July 12, 2010, August 30, 2010, December 20, 2010 and May 5, 2011 are attached hereto as Exhibit E. Of the \$415,458.14 in fees and expenses previously allowed by this Court, BBW has received payments totaling \$415,458.14 comprised of application of the retainers and post-petition payments received from the Debtor.

Payment of Compensation

19. The source of the proposed payment to BBW of the final compensation and expense reimbursement allowed herein is requested to be paid by the Trustee from property of the estate.

20. BBW has not entered into any agreement or understanding of any kind, express or implied, with any other entity to share any compensation received or to be received by BBW for services rendered to the Debtor in connection with this case.

21. BBW has not previously received or been promised any payments for services rendered in this case except as set forth in paragraph 18 above.

22. The Affidavit of Donna B. Wallace pursuant to Rule 2016 of the Federal Rules of Bankruptcy Procedure is attached hereto as Exhibit F and made a part hereof.

Status of the Case

23. On May 12, 2011, the court entered an order converting the case to a case under Chapter 7 of the Code effective May 13, 2011. Debtor has met with the Trustee and (a) delivered all records requested by the Trustee; (b) tendered to the Trustee the sum of \$13,914.97 representing all remaining funds of the Debtor held Future Associates and Draiman Bank Accounts; and (c) discussed all material aspects of the case with the Trustee.

Notice to Creditors

24. BBW has sent 21 days' notice of the Application to the Debtor, all creditors and other parties in interest, including the United States Trustee in accordance with the provisions of Rule 2002 of the Federal Rules of Bankruptcy Procedure. A copy of the notice is attached hereto as Exhibit G.

Debtor's Approval

25. BBW certifies that the Debtor has received, reviewed and approved this Application.

WHEREFORE, BBW requests the entry of an order providing the following:

A. Allowing to BBW final compensation in the amount of \$48,767.50 for actual and necessary professional services rendered to the Debtor from March 1, 2011 through May 13, 2011;

B. Allowing to BBW reimbursement in the amount of \$827.48 for its actual and necessary expenses incurred in connection with such services;

C. Allowing BBW an administrative claim in the Chapter 7 Case for compensation and expenses allowed pursuant to this Application; and

D. Granting such other and further relief as this Court deems appropriate.

Dated: June 30, 2011

BALDI BERG & WALLACE, attorneys for
NACHSHON DRAIMAN debtor and debtor in
possession

By: /s/ Donna B. Wallace

Partner

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